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11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 **Juan Manuel Chavez,**

16 Petitioner,

17 v.

18 **Ben Curry, Warden,**

19 Respondent.
20

C07-5512 PJH

21 **ANSWER TO THE ORDER TO SHOW**
22 **CAUSE; MEMORANDUM OF POINTS**
23 **AND AUTHORITIES**

24 Judge: The Honorable Phyllis J. Hamilton
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TABLE OF CONTENTS

	Page
ANSWER TO THE ORDER TO SHOW CAUSE	2
MEMORANDUM OF POINTS AND AUTHORITIES	9
ARGUMENT	
THE STATE COURT DENIALS OF CHAVEZ'S HABEAS CLAIM WERE NEITHER CONTRARY TO, OR AN UNREASONABLE APPLICATION OF, CLEARLY ESTABLISHED FEDERAL LAW, NOR BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS.	9
A. The State Court Decisions Were Not Contrary to Clearly Established Federal Law.	10
1. Chavez received all process due under the only United States Supreme Court law addressing due process in the parole context.	10
2. The Ninth Circuit's some-evidence test is not clearly established Supreme Court law.	10
3. Even if the some-evidence standard were clearly established federal law, the state court decisions correctly applied this standard.	12
B. The State Court Decisions Upholding the Board's Parole Denial Reasonably Determined the Facts.	15
CONCLUSION	17

TABLE OF AUTHORITIES

	Page
Cases	
<i>Apprendi v. New Jersey</i> 530 U.S. 466, 488-90 (2000)	8
<i>Blakely v. Washington</i> 542 U.S. 296, 303-04 (2004)	9
<i>Carey v. Musladin</i> ___ U.S. ___, 127 S.Ct. 649, 653	6, 11
<i>Estelle v. McGuire</i> 502 U.S. 62, 67 (1991)	8
<i>Foote v. Del Papa</i> 492 F.3d 1026, 1029 (9th Cir. 2007)	11
<i>Greenholtz v. Inmates of Neb. Penal & Corr. Complex</i> 442 U.S. 1, 12 (1979)	6, 7, 10, 12, 17
<i>Himes v. Thompson</i> 336 F.3d 848, 853 (9th Cir. 2003)	10, 13
<i>In re Dannenburg</i> 34 Cal. 4th 1061, 1087 (2005)	6
<i>Irons v. Carey</i> 505 F.3d 846, 851 (9th Cir. 2007)	7, 12
<i>Nguyen v. Garcia</i> 477 F.3d 716 (9th Cir. 2007)	11
<i>Rosenkrantz</i> 29 Cal. 4th at 678-679	8, 11, 13
<i>Sandin v. Connor</i> 515 U.S. 472, 484 (1995)	6
<i>Sass v. Cal. Bd. of Prison Terms</i> 461 F.3d 1123, 1128 (9th Cir. 2006)	7, 12, 13
<i>Schriro v. Landrigan</i> ___ U.S. ___, 127 S. Ct. 1933, 1942 (2007)	11
<i>Superintendent v. Hill</i> 472 U.S. 445 (1985)	12, 13
<i>Wainwright v. Greenfield</i> 474 U.S. 284 (1986)	12
<i>Williams v. Taylor</i> 529 U.S. 362, 412 (2000)	9

TABLE OF AUTHORITIES (continued)

	Page
<u>Statutes</u>	
California Code of Regulations, Title 15	
§ 2281(b)	8
§ 2402(b)	8
California Penal Code	
§ 190(a)	9
United States Code, Title 28	
§ 2244(d)(1)	9
§ 2254(d)(1)	6
§ 2254(d)(1-2)	9
§ 2254(d)(2)	15
<u>Other Authorities</u>	
Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA)	7-12, 15, 17

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**ANSWER TO THE ORDER TO SHOW
CAUSE; MEMORANDUM OF POINTS
AND AUTHORITIES**

Judge: The Honorable Phyllis J. Hamilton

21 Petitioner Juan Manuel Chavez, an inmate at the Correctional Training Facility serving an
22 indeterminate sentence for second-degree murder, represents himself in this habeas action.
23 Petitioner alleges that the Board of Parole Hearings improperly denied him parole at his March 5,
24 2007 subsequent parole consideration hearing. Specifically, Chavez argues that: (1) the Board's
25 decision violated his due process rights because it used immutable factors; (2) the Board's refusal
26 to give him a parole date violated his California statutory right to good-time credits; (3) the
27 Board's finding that he needs further therapy is not supported by "some evidence;" (4) the
28 Board's use of police reports as "some evidence" violated his due process rights and the

1 Confrontation Clause; (5) the Board's finding that the offense was particularly "cruel and
 2 callous" was not supported by evidence; (6) the Board's finding that it needed a new
 3 psychological report was not supported by "some evidence;" (7) the Board's decision to set his
 4 next hearing in two years, rather than one, was not supported by evidence; (8) he received
 5 ineffective assistance of counsel at trial because his lawyer failed to explain that he would never
 6 be granted parole; (9) the Board violated his Sixth Amendment right to a jury trial by treating the
 7 crime he pleaded guilty to as a greater offense; and (10) the Board's finding violated his due
 8 process rights because it contradicts the California Department of Corrections and
 9 Rehabilitation's (CDCR) finding that considers him a "low risk." The Court summarily
 10 dismissed the arguments in number two, eight, and ten. The Court issued a December 17, 2007
 11 Order to Show Cause as to Chavez's remaining claims, and Respondent Ben Curry, the current
 12 Acting Warden of the Correctional Training Facility, submits this Answer with supporting
 13 memorandum of points and authorities.

14 ANSWER TO THE ORDER TO SHOW CAUSE

15 In response to the Petition for Writ of Habeas Corpus filed on October 30, 2007,
 16 Respondent hereby admits, denies, and alleges:

17 1. Chavez is lawfully in the custody of the California Department of Corrections and
 18 Rehabilitation (CDCR) following his March 24, 1993 conviction for second-degree murder. (Ex.
 19 A, Abstract of Judgment.) He is currently serving an indeterminate sentence of fifteen years to
 20 life.

21 2. The remaining issues before the Court do not challenge the underlying conviction.
 22 Also, Chavez does not contest that he received notice of his 2007 parole consideration hearing,
 23 appeared and participated at the hearing, and was told of and received a copy of the Board's
 24 decision finding him unsuitable for parole.

25 3. Respondent affirmatively alleges that Chavez used his bare hands to strangle to death
 26 the victim, Sonia Sanchez, whom Chavez had a casual and sexual relationship with while he
 27 maintained a separate relationship with another woman. (Ex. B, Police Interview, at pp. 55-56;
 28 Ex. C, Autopsy Report, at pp. 1-2; Ex. D, Probation Officer's Report, at pp. 2, 6.) In addition to

1 the signs of strangulation, the victim was found with lacerations to her vagina and anus. (Ex. C,
2 at pp. 1, 3.) The autopsy report also indicates that the victim incurred a small contusion area on
3 her scalp, and abrasions on her left hand. (*Id.* at p. 3.)

4 After strangling the victim, Chavez dumped the victim's body, nude from the waist down,
5 on a beach. (Ex. E, Investigative Crime Report, at p. 12.) A witness observed Chavez pull the
6 victim's body from a car. (*Id.* at pp. 5-6.) Chavez then dragged the victim's body onto the sand
7 and left the victim's body face down. (*Id.* at pp. 5-6, 12.) Next, Chavez drove away in the
8 victim's car. (*Id.* at p. 6.) The witness called "911" at around 5:00 a.m. and reported the
9 incident. (*Id.* at pp. 6, 11-12.) When police discovered the victim's body, she had two foot
10 prints etched into the back of her sweatshirt. (*Id.* at pp. 8, 12.)

11 Soon thereafter, police officers pulled Chavez over in the victim's car. (*Id.* at pp. 26-27.)
12 The arresting police officers reported that blood stains appeared to be on Chavez's hands and on
13 a blanket in the passenger seat. (*Id.* at p. 29.) The officers also observed a women's purse on the
14 passenger seat. (*Id.*) The officers then detained Chavez and transported him to the police station.
15 (*Id.*)

16 Officers administered a blood-alcohol test, which determined that Chavez had between a
17 .12% and .13% blood-alcohol content at approximately 6:11 a.m. (*Id.* at p. 34.) During the
18 booking inventory of Chavez's property, the booking officer found two gold bracelets, one which
19 containing the name "SONIA" on the name plate, and two gold rings in Chavez's left front shirt
20 pocket. (*Id.*) The booking officer observed that all the items appeared to be woman's jewelry.
21 (*Id.*) The officers also observed that Chavez had a small, bloody scrape on his left wrist, and two
22 scratches on his right thumb. (*Id.* at p. 35.)

23 According to Chavez's statements to police, he and Sonia Sanchez were involved in a
24 relationship. (Ex. B, at p. 54; Ex. D, at p. 2.) The two were preparing to have sexual intercourse
25 in Ms. Sanchez's car, when an argument ensued. (Ex. B, at p. 56; Ex. D, at p. 2.) Chavez stated
26 that after he began choking the victim with both hands, he blacked out. (*Id.*) When he awoke,
27 Ms. Sanchez was dead. (*Id.*)

28 4. Respondent affirmatively alleges the Chavez pleaded guilty to second-degree murder

1 for killing Sonia Sanchez. (Ex. D, at p. 1.)

2 5. Respondent affirmatively alleges that Chavez was on probation at the time police
3 officers arrested him for the commitment offense. (*Id.* at p. 4; Ex. F, Lifer Prisoner Evaluation
4 Report, at p. 2; Ex. G, Parole Hearing Transcript, at p. 57.) The probation stemmed from a
5 November 19, 1991 arrest, and later conviction of, misdemeanor burglary and vandalism. (*Id.*)
6 As a result of the conviction, Chavez received a one-year jail sentence and 36 months of
7 probation. (*Id.*)

8 6. Respondent affirmatively alleges that at the time of the commitment offense Chavez
9 used marijuana approximately twice a month and cocaine occasionally. (Ex. D, at p. 5.) In the
10 past, he also used PCP. (*Id.*; Ex. F, at p. 3.; Ex. H, 2006 Mental Health Evaluation, at p. 2; Ex. I,
11 2002 Mental Health Evaluation, at pp. 3-4.) Chavez also admits that in the past he excessively
12 used alcohol. (Ex. H, at p. 2.) According to Chavez, he used to be an alcoholic. (*Id.*)

13 7. Respondent affirmatively alleges that at his 2007 parole consideration hearing, Chavez
14 made several assertions concerning the facts surrounding the murder and his subsequent arrest.
15 (Ex. G, at pp. 35-45.) Some of these assertions were inconsistent with Chavez's prior statements
16 and the officers' observations at the time of his arrest. First, Chavez told the Board that he
17 remembers the argument he had with the victim, but that he blacked out before strangling her
18 with his hands. (*Id.* at pp. 38, 44.) He stated that he does not remember his hands around her
19 throat. (*Id.* at p. 44.) However, when Chavez confessed to the crime, he told officers that he
20 blacked out *after* he began choking the victim with both hands. (Ex. B, at p. 56; see also Ex. H,
21 at p. 3 [Chavez describing crime to psychologist].) Second, when asked why he had the victim's
22 jewelry in his shirt pocket during the inventory search, Chavez told the Board that the police had
23 put those items in his shirt pocket. (Compare Ex. G, at pp. 36-37 with Ex. E, at p. 34.)

24 According to Chavez, those items were on the seat in the victim's car when the police pulled him
25 over, and the arresting officers put those items on him when they arrested him. (Ex. G, at p. 37.)

26 8. Respondent affirmatively alleges that in his 2007 parole consideration hearing, Chavez
27 maintained that the murder occurred as a result of "ignorance completely from being stupid and
28 drunk." (Ex. G, at p. 44.) Chavez stated that "the main issue of it was me and my drinking."

1 (*Id.* at p. 41.) In addition, Chavez attributed his inability to recall several aspects of the crime to
2 his alcohol consumption that night. (*Id.* at p. 38.)

3 9. Respondent affirmatively alleges that in his 2007 parole consideration hearing, Chavez
4 stated that he did not know if the victim was dead when he pulled her out of her car and dumped
5 her body on the beach. (*Id.* at p. 39.) He stated that he did not call "911" and left her there
6 instead because he panicked and was afraid. (*Id.*) Chavez gave the same explanation for taking
7 the victim's car. (*Id.* at p. 36.)

8 10. Respondent affirmatively alleges that at his 2007 parole consideration hearing, Chavez
9 denied that he had sex with the victim on the night he murdered her. (*Id.* at p. 37-38.) When
10 asked about the indications of sodomy and the vaginal laceration on the victim, Chavez claimed
11 that they had engaged in foreplay and were messing around with each other before the argument.
12 (*Id.*)

13 11. Respondent affirmatively alleges that the Board denied Chavez parole in his 2007
14 parole consideration hearing. (*Id.* at pp. 55-61.) In denying parole, the Board relied on the
15 gravity of the commitment offense. (*Id.* at pp. 55-56.) The Board explained that the offense was
16 especially cruel and callous in that Chavez strangled the victim with his hands. (*Id.*) The Board
17 also noted that the lack of significant injuries on Chavez after his arrest indicates that Chavez
18 strangled the victim with little provocation or justification. (*Id.*; see also Ex. E, at p. 35.)

19 The Board also relied on Chavez's lack of insight with regard to the underlying causes of
20 the murder. (Ex. G, at pp. 56-58.) The Board failed to believe that the sole reason for the crime
21 was Chavez's intoxication. (*Id.* at p.57.) The Board noted that by blaming alcohol and claiming
22 that he blacked out, Chavez was distancing himself from the moral responsibility of the murder.
23 (*Id.*) The Board acknowledged that Chavez attended an Anger and Self-Awareness Course in
24 2005, but noted that he needs further therapy in order to face, discuss, understand, and cope with
25 stress in a nondestructive manner. (*Id.* at pp. 23, 57.)

26 In addition, the Board's denial referenced other facts concerning the magnitude of the crime
27 and Chavez's credibility when explaining it. For instance, the Board noted the injuries
28 discovered on the victim's anus and vagina. (*Id.* at p. 56.) The Board also commented that after

1 committing the murder Chavez took the victim's car, and was found with the victim's jewelry in
2 his pocket. (*Id.*) Yet rather than offering true insights into his behavior that night, Chavez told
3 the Board that he blacked out from the alcohol and panicked. (*Id.*)

4 12. Respondent affirmatively alleges that the Board considered all relevant information in
5 denying Chavez parole, including those factors indicative of parole suitability. (*Id.* at pp. 18-28,
6 60.)

7 13. Respondent affirmatively alleges that the Los Angeles County District Attorney's
8 office opposed granting Chavez parole. (*Id.* at pp. 46-50, 60.)

9 14. Respondent affirmatively alleges that it appears Chavez filed a habeas petition in the
10 Los Angeles County Superior Court raising the same issues that he alleges here, and that the
11 superior court rendered a denial. (See Ex. J, Appellate Court Petition, at p. 6 [acknowledging
12 filing superior court petition]; and Ex. K, Appellate Court Denial [referencing Super. Ct. No.
13 NA013974].) Unfortunately, the superior court could not located the petition or denial. As a
14 result, Respondent could not obtain a state-court reasoned decision.

15 15. Respondent admits that the California Court of Appeal issued a July 19, 2007 denial of
16 Chavez's habeas petition that raised the same contentions that he alleges here. (Ex. K.)
17 Additionally, the California Supreme Court denied Chavez's petition on October 10, 2007.
18 Hence, Respondent admits Chavez exhausted his state court remedies in regard to the issues
19 currently before this Court. 28 U.S.C. § 2254(d)(1).

20 16. Respondent denies that the state courts' adjudications of Chavez's claims were
21 contrary to, or involved an unreasonable application of, clearly established federal law as
22 determined by the Supreme Court. 28 U.S.C. § 2254(d)(1).

23 17. Respondent preserves the argument that Chavez does not have a federally protected
24 liberty interest in parole. See *Sandin v. Connor*, 515 U.S. 472, 484 (1995) (no federal liberty
25 interest is created unless an action imposes an atypical or significant hardship compared with
26 ordinary prison life); *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 12
27 (1979) (liberty interest in conditional parole-release date created by unique structure and
28 language of state parole statute); and *In re Dannenburg*, 34 Cal. 4th 1061, 1087 (2005)

1 (California's parole scheme is a two-step process that does not impose a mandatory duty to grant
2 life inmates parole before a suitability finding); *contra Sass v. Cal. Bd. of Prison Terms*, 461
3 F.3d 1123, 1128 (9th Cir. 2006) (holding that California inmates have a federally protected
4 liberty interest in parole date).

5 18. Respondent affirmatively alleges that Chavez had an opportunity to present his case to
6 the Board, and the Board provided him with a detailed explanation for its parole denial. Thus,
7 Chavez received all process due under *Greenholtz*, the only clearly established federal law
8 regarding due process rights of inmates at parole hearings.

9 19. Respondent affirmatively alleges that the Board's decision is supported by some
10 evidence. However, notwithstanding the Ninth Circuit's contrary decision in *Irons v. Carey*, 505
11 F.3d 846, 851 (9th Cir. 2007), Respondent denies that the Supreme Court has ever clearly
12 established that a state parole board's decision must be supported by some evidence.

13 20. Respondent affirmatively alleges that federal due process does not preclude the Board
14 from relying on immutable factors to deny parole. *Sass*, 461 F.3d at 1129. Therefore, Chavez's
15 claim — alleging that the Board's reliance on immutable factors violated his due process rights
16 — fails under AEDPA because the state court decisions to deny the same claim were not contrary
17 to, and did not involve an unreasonable application of, clearly established United States Supreme
18 Court law.

19 21. Respondent denies that clearly established federal law requires the Board to support
20 every finding or recommendation in a parole consideration hearing with some evidence.
21 Therefore, Chavez's claim that some evidence does not support the Board's finding that he
22 requires further therapy fails under AEDPA. Nonetheless, the Board's recommendation is
23 supported by some evidence. This recommendation resulted from Chavez's lack of insight into
24 the causative factors of the commitment offense. (Ex. G, at pp. 56-58.) And Chavez's lack of
25 insight was reflected by the manner in which he blamed alcohol for his actions and his lack of
26 candor when discussing the facts of the crime. (*Id.* at pp. 38, 44, 56-58.)

27 22. Respondent denies that the Board's use of police reports violates due process or the
28 Confrontation Clause. Respondent further denies that there is a clearly established federal right

1 that prevents the Board from using such information. Moreover, California law requires the
2 Board to consider “[a]ll relevant, reliable information available . . .” Cal. Code Regs. tit. 15, §
3 2402(b). Accordingly, the Board did not violate federal law nor California law in utilizing the
4 police reports for its decision.

5 23. Respondent affirmatively alleges that Chavez’s claim that no evidence supports the
6 finding that the offense was particularly cruel and callous fails under AEDPA. The state court
7 decisions to deny this same claim were not contrary to, and did not involve an unreasonable
8 application of, clearly established United States Supreme Court law.

9 24. Respondent denies that clearly established federal law requires the Board to support
10 every finding or recommendation in a parole consideration hearing with some evidence.
11 Therefore, Chavez’s claim that some evidence does not support the Board’s finding that it needed
12 a new psychologist report fails under AEDPA. Furthermore, the Board’s denial of parole was
13 not based on the lack of a psychologist report. (Ex. G, at p. 58.) Rather, the Board merely noted
14 that a psychologist examination would be beneficial for the next parole hearing. (*Id.* at pp. 58-
15 59.)

16 25. Respondent admits that the Board issued a two-year denial of parole, rather than a one-
17 year denial. However, Respondent denies that Chavez maintains a clearly established federal
18 right with regard to the length of time a parole denial may extend. Respondent affirmatively
19 alleges that such claims are matters of state law, which cannot be grounds for federal habeas
20 relief. *Estelle v. McGuire*, 502 U.S. 62, 67 (1991) (holding mere violations of state law are not
21 cognizable under federal habeas law).

22 26. Respondent denies that the Board violated Chavez’s Sixth Amendment rights or
23 conducted post-trial fact finding in violation of Chavez’s right to a jury trial. Respondent denies
24 that there is a clearly established federal right that prevents the Board from conducting post-
25 conviction findings. Respondent affirmatively alleges that the Board properly considered all
26 relevant and reliable factors that were probative of Chavez’s parole suitability. Cal. Code Regs.
27 tit. 15, § 2281(b); *Rosenkrantz*, 29 Cal. 4th at 678-679. Respondent affirmatively alleges that the
28 United States Supreme Court holdings in *Apprendi v. New Jersey*, 530 U.S. 466, 488-90 (2000),

1 and *Blakely v. Washington*, 542 U.S. 296, 303-04 (2004), do not apply here because Chavez is
 2 not serving a sentence beyond the prescribed statutory maximum for second-degree murder. *See*
 3 Cal. Penal Code § 190(a).

4 27. Respondent admits Chavez's claims are timely under 28 U.S.C. § 2244(d)(1) and that
 5 the Petition is not barred by any other procedural defenses.

6 28. Respondent denies that an evidentiary hearing is necessary in this matter.

7 29. Respondent affirmatively alleges that Chavez fails to establish any grounds for federal
 8 habeas relief.

9 30. Except as expressly admitted above, Respondent denies, generally and specifically,
 10 each allegation of the petition, and specifically denies that Chavez's administrative, statutory, or
 11 constitutional rights have been violated in any way.

12 Accordingly, Respondent respectfully requests that the Court deny the Petition for writ of
 13 habeas corpus and dismiss these proceedings.

14 MEMORANDUM OF POINTS AND AUTHORITIES

15 ARGUMENT

16 **THE STATE COURT DENIALS OF CHAVEZ'S HABEAS CLAIM** 17 **WERE NEITHER CONTRARY TO, OR AN UNREASONABLE** 18 **APPLICATION OF, CLEARLY ESTABLISHED FEDERAL LAW, NOR** 19 **BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS.**

20 The Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA) modified "the role
 21 of federal habeas courts in reviewing petitions filed by state prisoners by placing a new constraint
 22 on the power of a federal habeas court to grant a state prisoner's application for a writ of habeas
 23 corpus with respect to claims adjudicated on the merits in state court." *Williams v. Taylor*, 529
 24 U.S. 362, 412 (2000). Under AEDPA, a federal court may grant a writ of habeas corpus on a
 25 claim that a state court already adjudicated on the merits *only if* the state court's adjudication was
 26 either: (1) "contrary to, or involved an unreasonable application of, clearly established Federal
 27 law, as determined by the Supreme Court of the United States;" or (2) "based on an unreasonable
 28 determination of the facts in light of the evidence presented at the State Court proceeding." 28
 U.S.C. § 2254(d)(1-2).

Here, the state court decisions denying Chavez's claims for habeas relief were neither contrary to, or an unreasonable application of, federal law.^{1/} In addition, the state court decisions were not based on an unreasonable determination of the facts in light of the evidence presented. Therefore, Chavez fails to establish a violation of AEDPA standards, and the state court decisions denying habeas relief must stand.

A. The State Court Decisions Were Not Contrary to Clearly Established Federal Law.

Under the first AEDPA standard, a federal court may grant habeas relief if the state court decision was contrary to, or an unreasonable interpretation of, clearly established federal law as determined by the Supreme Court of the United States. Here, Chavez received all process due under *Greenholtz*, the only clearly established federal law regarding the due process rights of an inmate at a parole-consideration hearing.

1. Chavez received all process due under the only United States Supreme Court law addressing due process in the parole context.

In *Greenholtz*, the United States Supreme Court established the due process protections required in a state parole proceeding. The Court held that the only process due at a parole consideration hearing is an opportunity for the inmate to present his case, and an explanation for a parole denial. *Greenholtz*, 442 U.S. at 16.

Chavez received both of these protections at his 2007 parole consideration hearing. (See generally Ex. G.) Therefore, the state courts' adjudications of his habeas claim did not violate clearly established Supreme Court precedent. Accordingly, Chavez's claim fails under AEDPA.

2. The Ninth Circuit's some-evidence test is not clearly established Supreme Court law.

Chavez challenges the sufficiency of the evidence the Board relied on in its decision. While

1. When, as here, the state court's holding does not provide a reasoned explanation, the reviewing court must independently review the record to determine whether the state court decision was a reasonable application of clearly established federal law. *Himes v. Thompson*, 336 F.3d 848, 853 (9th Cir. 2003). While it appears that the superior court rendered a reasoned decision (see Ex.'s J and K), Respondent could not obtain these records from the Los Angeles County Superior Court.

1 California law requires a reviewing court to apply the some-evidence standard of review, *In re*
 2 *Rosenkrantz*, 29 Cal. 4th 616, 658 (2002), the some-evidence test should not apply to a federal
 3 habeas proceeding challenging a parole denial, because the Supreme Court has never found that
 4 due process requires this level of judicial review.

5 The United States Supreme Court reiterated that for AEDPA purposes, “clearly established
 6 federal law” refers only to the holdings of the nation’s highest court on the specific issue
 7 presented. *Carey v. Musladin*, ___ U.S. ___, 127 S. Ct. 649, 653 (2006). In *Musladin*, the Ninth
 8 Circuit held that under clearly established federal law courtroom spectators who wore buttons
 9 depicting the victim in a murder trial inherently prejudiced the defendant and denied him a fair
 10 trial. *Id.* at 652. In vacating the Ninth Circuit’s decision, the Supreme Court explained that the
 11 two Supreme Court cases that the Ninth Circuit relied on — one involving a defendant who was
 12 required to wear prison clothing during trial and the other concerning a defendant who had four
 13 uniformed troopers placed behind him at trial — involved state-sponsored courtroom practices
 14 that were unlike the private conduct of the victim’s family. *Id.* at 653-54. As a result, the Court
 15 held that “given the lack of applicable holdings from [the Supreme Court], it could not be said
 16 that the state court ‘unreasonably appl[ied] . . . clearly established Federal law.’” *Id.* at 653-54.

17 Similarly, the Supreme Court found in *Schriro v. Landrigan*, ___ U.S. ___, 127 S. Ct. 1933,
 18 1942 (2007), that a federal habeas petitioner maintained no claim under AEDPA because
 19 Supreme Court precedent finding ineffective assistance of counsel when an attorney fails to
 20 adequately investigate mitigating evidence is factually distinct from a defense attorney failing to
 21 investigate mitigating evidence after the client demonstrates a reluctance to assist the
 22 investigation. Consequently, the Supreme Court indicated that circuit courts may not import —
 23 under the guise of “clearly established federal law” — a federal standard used in one context to a
 24 different factual circumstance. *Id.*; *see also Musladin*, 127 S. Ct. at 653-54.^{2/}

25
 26 2. Likewise, the Ninth Circuit has recently affirmed this principle in a number of cases. *See*
 27 *e.g., Foote v. Del Papa*, 492 F.3d 1026, 1029 (9th Cir. 2007) (affirming district court’s denial of
 28 habeas claim alleging ineffective assistance of appellate counsel based on an alleged conflict of
 interest because the Supreme Court has never held — even though the Ninth Circuit has — that such
 an irreconcilable conflict violates the Sixth Amendment); and *Nguyen v. Garcia*, 477 F.3d 716 (9th

1 Despite the Supreme Court's guidance in this area, the Ninth Circuit continues to extend the
 2 *Hill* some-evidence standard of review — a Supreme Court holding applicable to prison
 3 disciplinary hearings — to habeas petitions challenging denials of parole. *Sass v. Cal. Bd. of*
 4 *Prison Terms*, 461 F.3d 1123 (9th Cir. 2006) (referencing *Superintendent v. Hill*, 472 U.S. 445
 5 (1985) — a prison disciplinary case — for proposition that Board's denial of parole requires
 6 some evidence); *Irons v. Carey*, 505 F.3d 846 (9th Cir. 2007) (pet. for reh'g en banc denied).

7 Furthermore, *Greenholtz*, the only Supreme Court decision concerning the due process
 8 rights of an inmate in the parole context, specifically recognized the procedural distinction
 9 between the government denying an inmate parole and the government determining guilt by way
 10 of an adversarial proceeding. *Greenholtz*, 442 U.S. at 15-16. Based on this distinction, the
 11 Supreme Court determined that a denial of parole only requires the state to provide an
 12 opportunity for the inmate to present his case and an explanation for the parole denial — not
 13 additional protections, such as those in an adversarial proceeding. *Id.* (reasoning that "to require
 14 the parole authority to provide a summary of the evidence would convert the [parole-
 15 consideration] process into an adversary proceeding and to equate the Board's parole release
 16 determination with a guilt determination").

17 As a result, for AEDPA purposes, the *Hill* some-evidence standard of review required for
 18 prison *disciplinary* hearings should not apply to a federal habeas proceeding challenging a parole
 19 denial. However, Respondent recognizes that the Ninth Circuit has held otherwise and will argue
 20 this case accordingly.

21
 22 **3. Even if the some-evidence standard were clearly established federal
 law, the state court decisions correctly applied this standard.**

23 Assuming the some-evidence test is clearly established Supreme Court law for parole
 24 denials, Chavez's claim fails under AEDPA because the state court decisions were not contrary
 25 to, and did not involve an unreasonable application of, the some-evidence requirement.

26
 27 Cir. 2007) (holding that because the Supreme Court had not extended a defendant's right to counsel
 28 — established in *Wainwright v. Greenfield*, 474 U.S. 284 (1986) — to a competency hearing, federal
 law was not clearly established for AEDPA purposes).

1 California law requires that some evidence support the Board's decision to deny parole.
2 *Rosenkrantz*, 29 Cal. 4th at 616. Here, the California appellate court cited *Rosenkrantz* in its
3 denial of Chavez's state-court claim. (Ex. K.) Therefore, this denial indicates that the state court
4 applied the some-evidence standard in reviewing the Board's parole denial. As a result, the state
5 court decisions were not contrary to federal law, because it appears that the appellate court *did*
6 apply the some-evidence standard. (*Id.*)

7 Furthermore, when, as here, the state court holding fails to provide a reasoned explanation,
8 the reviewing court must independently review the record to determine whether the state court's
9 decision was a reasonable application of federal law. *Himes v. Thompson*, 336 F.3d 848, 853
10 (9th Cir. 2003). Assuming the some-evidence standard applies, this standard of review "does not
11 require examination of the entire record, independent assessment of the credibility of the
12 witnesses, or weighing of the evidence;" rather, it is satisfied if there is "any evidence in the
13 record that could support the conclusion reached by the [Board]." *Hill*, 472 U.S. at 455-57; *see*
14 *also Sass*, 461 F.3d at 1129 (stating that "*Hill's* some evidence standard is minimal").

15 Here, some evidence supports the Board's decision to deny parole. The Board based its
16 denial on several factors, each containing evidentiary support.

17 First, the Board relied on the gravity of the commitment offense. (Ex. G, at pp. 55-51.) The
18 Board explained that the offense was especially cruel and callous in that Chavez strangled the
19 victim with his hands. (*Id.*) The Board commented that the lack of significant injuries on
20 Chavez after his arrest indicates that he strangled the victim with little provocation or
21 justification. (*Id.*; see also Ex. E, at p. 35 [police report noting a small scrape and two scratches
22 on Chavez at the time of arrest].) The Board further added that the victim sustained injuries to
23 her anus and vagina. (Ex. G, at p. 56; see also Ex. C, at pp. 1, 3.) Also, the Board noted that
24 after killing the victim, Chavez took the victim's car and was found with her jewelry in his
25 pocket. (*Id.*; see also Ex. E, at p. 34.)

26 Although not discussed in the Board's denial, several other facts demonstrate the gravity of
27 the crime. For instance, the victim sustained a small contusion on her scalp and abrasions on her
28 left hand. (Ex. C, at p. 3.) Also, the especially cruel nature of the crime is reflected in the

1 manner in which Chavez disposed of the victim's body. Chavez dragged Ms. Sanchez's body —
2 nude from the waist down — onto a beach and left her face down in the sand. (Ex. E, at pp. 5-6,
3 12.) In the parole hearing, Chavez acknowledged that when he dumped the victim's body, he did
4 not know whether she was in fact dead. (Ex. G, at p. 39.) Nonetheless, he chose not to call
5 "911." (*Id.*) Also, police investigators found two foot marks etched into the back of the victim's
6 sweatshirt. (Ex. E, at pp. 8, 12.) Accordingly, some evidence supports the Board's finding that
7 the offense was especially cruel and callous.

8 Second, the Board relied on Chavez's lack of insight with regard to the underlying causes of
9 the murder. (Ex. G, at pp. 56-58.) The Board noted that by blaming alcohol and claiming that he
10 blacked out, Chavez was distancing himself from the moral responsibility of the murder. (*Id.*)

11 Again, the record supports the Board's finding. During the parole hearing, Chavez
12 represented that the murder occurred as a result of "ignorance completely from being stupid and
13 drunk." (*Id.* at p. 44.) He also stated that "the main issue of it was me and my drinking." (*Id.* at
14 p. 41.) In addition, Chavez blamed his inability to recall several aspects of the crime on his
15 alcohol consumption the night of the murder. (*Id.* at p. 38.) Accordingly, the record reflects that
16 during his parole hearing Chavez blamed his murderous behavior on his alcohol consumption.

17 The Board also rejected Chavez's rationalization that the sole reason for the crime was his
18 intoxication. (*Id.* at p.57.) Here too, the evidence supports the Board's finding. The police
19 report notes that Chavez's blood alcohol content was between .12% and .13% at 6:11 a.m., which
20 was just over an hour after the witness at the crime scene notified police that he had seen a man
21 dump a body on the beach. (Compare Ex. E, at p. 34 with Ex. E, at pp. 11-12.) Thus, Chavez's
22 blood alcohol content was only .05% over the legal limit to drive an automobile. In addition, the
23 police pulled Chavez over while driving, not because he appeared to be drunk, but because the
24 car he was driving — the victim's car — matched the description of the murderer's get-away
25 vehicle. (Ex. E, at pp. 25-28.) Indeed, the evidence indicates that Chavez's intoxication was not
26 as overwhelming as he described it to the Board.

27 Furthermore, Chavez's prior inconsistent statements concerning his "black out" support the
28 Board's finding that Chavez lacks insight. In the parole hearing, Chavez told the Board that he

1 remembers the argument he had with the victim, but that he blacked out before strangling her
 2 with his hands. (Ex. G, at pp. 38, 44.) He specified that he does not remember his hands around
 3 her throat. (*Id.* at p. 44.) However, when Chavez confessed to the crime, he told police officers
 4 that he blacked out *after* he began choking the victim with both hands. (Ex. B, at p. 56; see also
 5 Ex. H, at p. 3 [Chavez describing facts of crime to psychologist in 2006].) Accordingly,
 6 Chavez's contradictory statements discredit his account of the murder. And, as a result, the
 7 record supports the Board's finding that Chavez is distancing himself from the moral
 8 responsibility of the murder by claiming he blacked out. (Ex. G, at pp. 56-58.)

9 Lastly, Chavez's gave other testimony at the parole hearing that undermines his account of
 10 the murder. For instance, the police noted that Chavez possessed the victim's jewelry in his shirt
 11 pocket at the time of the inventory search. (Ex. E, at p. 36-37.) This evidence implies that
 12 Chavez may have intended to rob the victim, or at least he decided to loot Ms. Sanchez's body
 13 after strangling her. But when asked why he had the victim's jewelry in his shirt pocket, Chavez
 14 told the Board that the police had put those items in his pocket when he was arrested. (Ex. G, at
 15 pp. 36-37.) Accordingly, either Chavez misrepresented his conduct to the Board, or police
 16 officers falsified evidence in the police report. Indeed, some evidence supports the Board's
 17 finding that Chavez lacks insight.

18 **B. The State Court Decisions Upholding the Board's Parole Denial** 19 **Reasonably Determined the Facts.**

20 Under the second AEDPA standard, a federal court may grant habeas relief if the state court
 21 decisions were based on an unreasonable determination of the facts in light of the evidence
 22 presented at the state court proceedings. 28 U.S.C. § 2254(d)(2).

23 Respondent could not obtain Chavez's state-court exhibits. Nonetheless, Chavez's citations
 24 in his state court petitions indicate that he attached the same exhibits in those proceedings as he
 25 produces here in his federal petition. (See Ex. J; Ex. L, Supreme Court Petition.) These exhibits
 26 include the 2007 parole consideration hearing transcript, the 2002 and 2006 mental health
 27 evaluations, and the police report all of which support the Board's findings. Accordingly, the
 28 state court decisions were not based on an unreasonable determination of the facts in light of the

1 evidence presented at those state proceedings.

2 Furthermore, an independent review of the record demonstrates that the Board relied on
3 accurate information with regard to the commitment offense, and Chavez's insight into the
4 crime. In addressing the commitment offense, the Board relied on the documents in Chavez's
5 central file, including the police report, and the probation officer's report. (See Ex. G, at pp. 12,
6 36-37.) In addressing Chavez's insight, the Board relied on Chavez's statements made in the
7 parole hearing, and the information contained in the police report and mental evaluations. (See
8 Ex. G, at pp. 27, 36-37.)

9 Chavez does not allege or provide any evidence to suggest that these documents contained
10 inaccurate information. Chavez does challenge the reliability of the police report, but fails to
11 allege what evidence in the police report is inaccurate, or that the Board relied on that inaccurate
12 evidence. (Pet. at p. 6m-6n.) Accordingly, the record indicates that the Board relied on accurate
13 information and did not base its decision on an unreasonable determination of the facts.

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CONCLUSION

Chavez fails to demonstrate a basis for relief under AEDPA's two standards permitting a habeas remedy after a state court has already adjudicated the same issue. Under the first standard, the state courts' adjudications of Chavez's claim were not contrary to, or an unreasonable application of, clearly established federal law, as determined by the United States Supreme Court. Chavez received all process entitled under *Greenholtz*, and — although not required by clearly established federal law — some evidence supports the Board's decision. Under the second AEDPA standard, the record reflects that the evidence presented at the parole hearing, such as Chavez's testimony, and the documents in his central file, accurately reflected the facts. Thus, Respondent respectfully requests that the petition be denied.

Dated: March 17, 2008

Respectfully submitted,

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Juan Manuel Chavez v. Ben Curry, Warden**

Case No.: **C07-5512 PJH**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **March 17, 2008**, I served the attached

**ANSWER TO THE ORDER TO SHOW CAUSE; MEMORANDUM OF POINTS
AND AUTHORITIES**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Juan Manuel Chavez (H-74168)
East Dormitory 098-Low
Correctional Training Facility
P.O. Box 689
Soledad, CA 93960-0689
In pro per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **March 17, 2008**, at San Francisco, California.

R. Panganiban

Declarant

/S/ R. Panganiban

Signature